

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CYTYC CORPORATION,	)	
	)	
Plaintiff,	)	Civil Action No. 03-11142 (DPW)
	)	[Lead Case]
v.	)	
	)	
TRIPATH IMAGING, INC.,	)	
	)	
Defendant.	)	
_____	)	
TRIPATH IMAGING, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 03-12630 (DPW)
	)	
v.	)	
	)	
CYTYC CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

**TRIPATH IMAGING, INC.’S MOTION TO EXCLUDE DEFENSES  
BASED ON CYTYC’S CDS-1000**

TriPath Imaging, Inc. (“TriPath”), pursuant to Rules 26(e)(2) and 37(c)(1) of the Federal Rules of Civil Procedure, hereby moves the Court for an Order excluding Cytyc Corporation (“Cytyc”) from raising any defense of patent invalidity or unenforceability based on its CDS-1000 in any proceedings in this action, including trial.

The Motion is made on the grounds that Cytyc failed to supplement its interrogatory responses during the fact discovery period to disclose any defenses based on its CDS-1000, and Cytyc’s failure to disclose was without substantial justification and resulted in severe prejudice to TriPath, which was deprived of any opportunity to conduct discovery on the alleged defenses. In

support of its motion, TriPath submits herewith a Memorandum with exhibits, Declaration of Michael Ray and Declaration of Charles Burke.

WHEREFORE, based on the grounds set forth herein and in the accompanying Memorandum and Declarations, TriPath respectfully requests that the Court grant its motion to exclude defenses based on Cytac's CDS-1000.

#### **CERTIFICATE OF CONFERENCE**

In accordance with Local Rule 7.1(a)(2), counsel for TriPath conferred with counsel for Cytac by letter (Exhibit 7 to Memorandum) and by telephone, but the parties were not able to resolve or narrow the issues in this motion. In addition, the Joint Status Report filed by the parties in this case on May 3, 2005, further confirms the parties' discussions and the need for this motion.

Respectfully submitted this the 5th day of May, 2005.

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